IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 44 of 2000

Date of decision: 19.7.2007

State **…Appellant.**

Versus

Om Parkash **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. Ashok Chaudhary, Addl. A.G.

For the respondent : Mr. K.B. Khajuria, Advocate.

Surjit Singh, Judge(Oral)

This appeal by the State is directed against the judgment of the trial Court, whereby the respondent, who was sent up for trial for offences punishable under Sections 353 and 332 of the Indian penal Code, stands acquitted.

2. Prosecution version, as per record, may be stated thus. On 21.7.1995 the respondent went to Primary Health Centre, Rajnagar to seek treatment for some ailment. Dr. R.K. Sharma, who was present in the OPD, asked the respondent to pay 25 paise on account of OPD chit charges. He is alleged to have taken out a currency note of the denomination of rupees one hundred. When the doctor asked for payment in coins of 25 paise only, the respondent is alleged to have thrown the coins on his head and assaulted him. He (the respondent) is alleged to have picked up a 'Danda' and hit the doctor on his arm and leg and then dealt a fist blow on his lips.

Whether reporters of the local papers may be allowed to see the judgment?

3. Trial Court acquitted the respondent holding that the testimony of the doctor, who appeared as PW-1, had not been corroborated by PW-5 Uttam Chand, Peon, who was present at the time when the incident took place. It is true that Uttam Chand PW-5 did not support the prosecution version, but the fact remains that he stood contradicted by his statement under Section 161 of the Code of Criminal Procedure, with which he was duly confronted and, therefore, the evidence on record was required to be examined and appraised ignoring his testimony.

4. Perusal of the testimony of PW-1 R.K. Sharma shows that there is no reason to disbelieve the same as the witness has categorically stated that first the respondent threw the coin at him and then assaulted and hit him with the 'Danda' and also dealt a fist blow. His statement is corroborated by the medico legal evidence, which is there on record in the form of testimony of PW-2 C.B. Singh and the medico legal report Ext. PW-2/A issued by him.

5. In view of the above stated position, appeal is accepted. Judgment of acquittal passed by the trial Court is set aside and the respondent is convicted of the offence under Section 332 of the Indian penal Code, because the medico legal evidence shows that PW-1 R.K. Sharma sustained simple injuries. The evidence on record also shows that Dr. R.K. Sharma was performing his duties as a doctor in a Government hospital at the time when he was caused the aforesaid injuries.

6. The respondent has been heard on the question of quantum of sentence. His plea is that he has two minor children to

maintain, look-after and support and that he is a poor man and in case he is sent to jail, it will become difficult for his children and other family members to maintain themselves. It is also his plea that leniency may be shown because of long lapse of time since the occurrence. .

7. Though the crime committed by the respondent is of serious nature, however, looking to the condition of the respondent and his family circumstances as stated by him and also the fact that at the relevant time he was a young man of around 22 years, I feel that ends of justice would be met if a lenient view is taken. Accordingly, he is sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for a further period of one week.

8. A copy of this judgment be supplied to the respondent free of cost immediately.

July 19, 2007 (BC) **(Surjit Singh)**
Judge